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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re MALACHI G., a Person Coming
Under the Juvenile Court Law.

B216051
(Los Angeles County
Super. Ct. No. CK68812)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ROSALINDA G.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.

M.K. Martinez, Commissioner. Affirmed.

Jennifer Mack, under appointment by the Court of Appeal, for Defendant and Appellant.

Robert E. Kalunian, Acting County Counsel, James M. Owens, Assistant County Counsel, Melinda S. White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Appellant Rosalinda G. (mother) contends that the dependency court abused its discretion when it denied her petition for modification (Welf. & Inst. Code, § 388) as to her son Malachi G.¹ We find no abuse of discretion and affirm.

FACTS AND PROCEDURAL HISTORY

1. Events up to the Jurisdictional Hearing

On June 18, 2007, the Los Angeles County Department of Children and Family Services (the Department) filed the dependency petition regarding Malachi. The accompanying report set forth these facts:

Eight-month-old Malachi had just been placed in a foster home. Mother received permanent placement services from the Department when she was a teenager. She did not know where Malachi's father was. The first referral to the Department was made in September 2006, a day after Malachi's birth. In a second referral, on May 6, 2007, the reporting party said mother had an ongoing drug problem and had smoked methamphetamine in front of Malachi. Mother and Malachi were moved to a domestic violence shelter called Angel Step Inn (Angel Step). A drug test of mother on May 9, 2007, was positive for cannabinoids, opiates, and hydrocodone. The Department set up family preservation services for mother on May 18, 2007. One week later, an employee of Angel Step reported that mother had thoughts of suicide, believed people were following her, hid behind cars, and thought her father (the MGF) was trying to take Malachi away from her. Mother was providing good care for Malachi, however. A social worker from the Department of Mental Health who evaluated mother concluded that mother did not need hospitalization but suffered from "healthy paranoia," due to abuse she had suffered in the past. The caseworker helped mother to move temporarily to a motel because mother thought there were people at Angel Step who knew the MGF.

The detention report further explained that on June 5, 2007, a hearing was held on mother's application for a temporary restraining order against the MGF. Mother wrote on the application that the MGF had threatened to kill and rape her, had exposed himself

¹ Subsequent statutory references are to the Welfare and Institutions Code unless otherwise stated.

to her, and had assaulted her. The MGF agreed to the temporary restraining order, which contained a provision that mother and the MGF were to stay away from one another even if they lived near each other. Mother wanted to return to her former apartment, next to the MGF's apartment, because her apartment had low rent and she thought "the city [was] going to pay her thousands of dollars" when she had to move out due to renovations. The Department agreed that mother and Malachi could return her former apartment. On June 13, 2007, mother asked the caseworker to place Malachi in a foster home for his safety. Mother said people were trying to kill her, she had heard guns clicking, and the MGF had threatened her. The caseworker placed Malachi in protective custody and began the court case.

The detention hearing occurred on June 18, 2007. The court ordered detention of Malachi, family reunification services, monitored visits, drug testing, and a parenting class.

Additional facts were provided in a July 18, 2007 report. Mother was "well bonded" with Malachi at that time. Mother was abused by her mother, father and stepfather when she was a child. She spent her teenage years in a number of foster homes and group homes. She dropped out of high school and worked at various jobs. Malachi was the result of a brief relationship she had with a man she knew only as "Josh." She tested positive for opiates and marijuana, and Malachi tested positive for opiates when Malachi was born, but she maintained that she only used substances that were prescribed for her. She was taking prescription marijuana and Vicodin at the time of the July 18, 2007 report. She still lived next door to the MGF, even though he was a drug addict and paranoid schizophrenic who had beaten her up as recently as July 1, 2007. She believed the MGF had friends and contacts everywhere and thought he was plotting with other residents of their building to kill her. She wanted Malachi to remain in foster care until she finished school, found a job, and moved to a new location.

A second amended petition was filed on August 21, 2007. An interim report described two physical fights in July 2007 that involved mother, the MGF, and the MGF's girlfriend. During the second incident, which occurred on July 29, 2007, mother stabbed the MGF in the chest, resulting in her incarceration for assault with a deadly

weapon. Prior to that time, she had been visiting Malachi once a week. During one visit, the police were called because mother maintained that a bump on Malachi's forehead showed that he was being abused in his foster home. The claim of abuse was not substantiated, but Malachi was moved to the foster home of "Ms. D." on July 26, 2007. He remained with Ms. D. during the rest of the proceedings below.

On August 21, 2007, mother appeared and denied the second amended petition. She was still in custody and had been unable to visit Malachi.

As of the proceedings on December 6, 2007, mother had been released from custody, was moving back and forth between friends in Los Angeles and Orange County, and resided primarily with a friend in Irvine. She submitted jurisdiction based on amended language in the second amended petition. The court found true that Malachi was placed at risk of harm due to mother's inability to make a plan for the child's necessary ongoing care and supervision. The court declared Malachi a dependent child of the court, ordered family reunification services for mother, and transferred the case to Orange County. The case plan included individual counseling for mother.

2. Events After the Jurisdiction Hearing

At proceedings on January 18, 2008, the case had returned to Los Angeles County from Orange County because mother had not obtained permission from her probation officer to move there. Mother was currently sleeping at the homes of friends.

On February 4, 2008, mother provided evidence that she had enrolled in programs for counseling, parent education and anger management.

A report of February 7, 2008, indicated that Malachi and Ms. D. had become very bonded, and Ms. D. wanted to adopt Malachi. Mother's visits with Malachi were now "sporadic and detrimental." Ms. D. was willing to bring Malachi halfway to mother, but mother was often late, or cancelled at the last minute. When mother showed up, she had difficulty bonding with Malachi, who threw tantrums, cried, and clung to Ms. D. Mother also caused problems by making unsubstantiated claims that Ms. D. was neglecting Malachi. The Department recommended termination of reunification services and scheduling of a permanent planning hearing.

At proceedings on March 3, 2008, mother still had no address or phone number. She had attended one counseling session with her therapist but missed her next three appointments. Her visits with Malachi continued to be sporadic, inconsistent, and traumatic for the child.

As of April 10, 2008, mother had been visiting Malachi once a week but still had no place to live. She used the restroom at the foster family agency to clean herself up and on one occasion ate Malachi's lunch. The day of the visits had been changed because mother said her boyfriend was stalking her. However, she was currently attending counseling regularly and had been in an anger management program since the end of January 2008. The court requested an updated report from the Department about her progress.

A report of May 6, 2008, indicated that mother was responsive to counseling but, in addition to her psychological issues, had many other issues like joblessness and homelessness. She had nearly completed parenting classes but still needed many more sessions of anger management class. She still used the bathroom at the visits to wash up, and it appeared from her condition at one visit that she was using drugs.

At the hearing of May 8, 2008, the Department requested termination of family reunification services. The court did not agree. It observed that although mother was still transient, she was attending the required programs and continued to visit Malachi, mother told the court she was trying to move to a shelter in Humboldt County, where a close friend lived. The court found that mother was in partial compliance with the case plan and there was a substantial probability that Malachi could be returned to her. It ordered that family reunification services were to be continued, Malachi was to remain in suitable placement with Ms. D., and the Department was to make reasonable efforts to help mother find housing. Ms. D. was granted de facto parent status.

Six months later, a November 6, 2008 report indicated that Malachi and Ms. D. were very attached, and Ms. D.'s home had been approved for adoption. Mother had completed a parenting program but had not recently attended counseling or anger management classes. She had been discharged from a homeless shelter for noncompliance and was currently living at a hotel. There were supposed to be monitored

visits every Wednesday at the Department office and every Thursday at the foster family agency. The visits were repeatedly disrupted because mother did not show up, called to cancel, or made unjustified calls to the child abuse hotline. Mother's unfounded concerns that Ms. D. was abusing Malachi had meant Malachi had a complete skeletal survey at a sexual assault center and weekly body checks by the Department. Malachi was traumatized by mother's angry outbursts during the visits. He cried and sobbed for Ms. D. and did not want to touch mother. Mother responded by yelling at Malachi that she was his mother and Ms. D. was not. On one occasion, mother had to be physically restrained when she tried to pull Malachi from Ms. D.'s arms. On another occasion, Malachi screamed, "No Mommy, No Mommy" before a visit and cried out, "No Mommy" during a nightmare. The Department again requested termination of family reunification services.

At the 18-month review hearing on November 6, 2008, Ms. D.'s counsel asked that mother's visits be limited to one per week due to the problems detailed in the Department's report. The court was particularly concerned about mother's angry outbursts in front of Malachi. The visits were reduced to one per week and a contested permanency hearing was scheduled.

Updated information on December 11, 2008, indicated that during a visit on November 26, 2008, mother upset Malachi by asking the social worker if the social worker wanted to adopt Malachi. Mother then failed to show up for or cancel the next scheduled visit. A contested permanent plan hearing that was scheduled for December 16, 2008, had to be continued because mother was again arrested a few days earlier and could not provide her counsel with certain necessary documents.²

At the contested permanency planning hearing on January 29, 2009, mother presented evidence that she had three visits with a psychiatrist at the Edelman Westside

² Mother said she was arrested for having her prescription medication on her person without labels on the bottles. Counsel for the Department thought the arrest was for felony possession of marijuana.

Mental Health Center, was on a waiting list for housing assistance, and had applied for Social Security benefits. The Department presented additional evidence showing that mother had completed a parenting class but not individual counseling or anger management, had lived in situations where Malachi could not be with her, and had a preoccupation with abuse that was detrimental to Malachi. The court terminated mother's family reunification services and set a date for a hearing to terminate her parental rights. It found, among other things, that mother had not substantially complied with the court's orders in over 18 months, so there was no reason to believe she would now do everything she needed to do. Mother's monitored visits were reduced to one per month.

On May 8, 2009, mother filed the petition for modification that has been raised as the issue on this appeal. As changes since the previous order, she asserted: "Mother has regularly participated in individual counseling and received psychiatric treatment and complied with conditions of probation as ordered by the court. Mother also has made her best effort to maintain regular visits with my child." To explain why a change in the previous order would be better for the child, she stated: "Since the last court date, I made my best effort to address the case issues and focus on my treatment goal and have made progress. Although I have made many mistakes in the past, I motivated myself to comply with court orders because I love my child and wish to reunify with him. I could now provide a safe and nurturing home for my child and I will continue to participate in programs to be a better parent."

As additional evidence, mother produced a letter from her psychiatrist that showed they met 11 times between December 5, 2008, and April 8, 2009. According to the letter, mother was compliant with medications about 50 percent of the time and efforts were being made to find an appropriate mood stabilizer. A letter from another mental health center showed that mother attended nine individual therapy sessions between February 18, 2009, and March 30, 2009, in addition to five such sessions between July 18, 2008, and September 23, 2008. Another letter showed that mother began receiving help from a homeless assistance program on March 4, 2009, was currently

living at a transitional living program, and would soon be filing an application for Social Security benefits.

A new report from the Department indicated that Malachi was a happy, affectionate, talkative child who was bonded with Ms. D. and had thrived in her care for almost two years. Mother had an appropriate visit with Malachi in February 2009 but did not visit in March 2009. The report noted the lack of bonding between mother and Malachi and Malachi's negative reaction to their visits. Termination of mother's parental rights was recommended.

On May 11, 2009, the court denied the request for modification without a hearing, on the ground that "[m]other is only at the very beginning of counseling to begin addressing her issues." The court then terminated mother's parental rights based on all the evidence before it. That same day, mother filed a notice of appeal.

DISCUSSION

Mother contends that the dependency court abused its discretion when it denied her section 388 petition without a hearing, as she made a sufficient showing to justify a full evidentiary hearing.

Section 388 "provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of his custody status." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) To prevail on a section 388 petition, a parent must show "not only changed circumstances but that a change in the child's placement would be in the best interests of the child." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 48.) The dependency court's ruling on such a petition is not disturbed on appeal unless an abuse of discretion is clearly established. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) "If the petition fails to state a change of circumstance or new evidence that may require a change of order or termination of jurisdiction, or that the requested modification would promote the best interest of the child, the court may deny the application ex parte." (Cal. Rules of Court, rule 5.570(d).)

Malachi did not live with mother after June 18, 2007, when he was eight months old. Family reunification services were terminated at the permanency planning hearing in January 2009. The evidence before the dependency court showed that mother was

given ample time to establish an appropriate living environment for Malachi and failed to do so. Mother felt threatened by the MGF but insisted on living next door to him, up to the time that she stabbed him during a fight. Most of the time Malachi was in foster care, she did not visit consistently, and when she did visit, she engaged in angry outbursts that were traumatic for Malachi. Her repeated false accusations of abuse meant Malachi was subjected to repeated unnecessary checks of his person. Over time, he reacted negatively to mother while developing a strong bond with Ms. D. Malachi had been in foster care for two years when mother filed the section 388 petition in May 2009. In the months immediately prior to that petition, mother finally started going regularly for visits with a psychiatrist and a counselor. Even then, she was only 50 percent compliant with her prescribed medications and was at the early stages of developing a framework for treatment. We therefore find no abuse of discretion in the summary denial of mother's section 388 petition.

DISPOSITION

The judgment is affirmed.

FLIER, J.

We concur:

RUBIN, Acting P. J.

LICHTMAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.